



MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into as of the date shown below by and between the COWLITZ INDIAN TRIBE, a federally recognized Indian tribe ("Tribe"), and CLARK COUNTY, a political subdivision of the State of Washington ("County").

1.0 INTRODUCTION

- 1.1 The Tribe is a federally recognized Indian tribe which is in the process of applying to have land taken into trust by the United States Department of the Interior, which land is within County's geographic boundaries ("Clark County Site").
- 1.2 The Tribe presently is evaluating a long-term economic development plan which would include planning for the ultimate development of all tribal properties, including the Clark County Site.
- 1.3 The Tribe desires to develop its economic opportunities in a manner which benefits the Tribe, its members and the general community as a whole; and the County recognizes that mutual benefits can be derived if this goal is achieved. Accordingly, the Tribe and the County have participated in a series of meetings to hear and consider the ways in which both parties can benefit by working together.
- 1.4 As a recognized Indian tribe, the Tribe has sovereign immunity and is not subject to state and local laws and regulations – including taxation, zoning, and land use restrictions. Nonetheless, the Tribe has demonstrated its commitment to an open government-to-government relationship with the County by voluntarily entering into the negotiations for, and execution of, this MOU and agreeing to be bound by the provisions hereof. Moreover, the Tribe has executed a waiver of sovereign immunity in favor of the County pursuant to which any disputes between the parties in conjunction with its provisions can be resolved in a fair and equitable manner.
- 1.5 This MOU embodies the concepts and agreements developed by the Tribe and the County to date as a result of those meetings and continuing dialogue. The cornerstone of this Agreement is that the County and the Tribe are entering into an enforceable Agreement to comprehensively mitigate impacts of this acquisition as developed, including, but not limited to: be consistent with attached county ordinances; mitigating environmental impact of its uses of trust land; paying development and other processing fees; be consistent with building and design standards set out in County ordinances; compensate the county law enforcement; prosecuting attorney, courts and schools and fire districts; and others who provide public services on the Tribe's trust lands.

2.0 FORMAT OF MOU

This MOU contains the various understandings between the Tribe and the County as set forth below.

3.0 LAW ENFORCEMENT

- 3.1** As the Tribe makes decisions as to the use or uses of the Clark County Site, the Tribe will enter into with Clark County a detailed agreement providing for law enforcement on tribal trust land. Such agreement will be more comprehensive than this MOU, but the following general issues are agreed to here and will be part of the subsequent law enforcement agreement.
- 3.2** The parties recognize that any tribal use of the Clark County Site will create added burdens not contemplated or allowed under current zoning in terms of patrolling and responding to calls for assistance. In order to meet these increased burdens, the Tribe and County agree as follows:
 - 3.2.1** The Tribe, in behalf of itself and all members, hereby consents to the entry of officers onto tribal trust lands and into any structures thereon for the purpose of providing law enforcement services.
 - 3.2.2** If the Tribe creates a tribal security force, Clark County will assist the Tribe with the cross training required to provide a smooth and effective working relationship. The Sheriff's Office will assist the Tribe as needed to review written policies and guidelines for tribal security personnel as well as expectations for Tribal security officers to interface effectively and smoothly with the operations of the Sheriff's Office.
 - 3.2.3** To help offset the added cost of such training, patrolling and response services by the Sheriff's Office, the Tribe will enter into an agreement to reimburse the Sheriff's Office for reasonable direct and indirect costs incurred in conjunction with the furnishing of law enforcement at the Clark County Site.
 - 3.2.4** The Sheriff's Office has developed a reasonable cost assessment for certain identified uses of the Clark County Site and their impacts upon law enforcement. Though the use of the property by the Tribe has not been determined, the Sheriff's Office has developed staffing analysis requirements based upon uses found in other Tribes' trust properties. The Sheriff's Office has developed Exhibit A, attached hereto, setting forth staffing requirements for certain types of uses or combinations thereof. The parties agree that should the Tribe elect to develop the property for those uses contained in Exhibit A, the Tribe will fund, at a minimum, the required number of deputy Full Time Equivalents ("FTE") as shall be



specifically agreed upon and memorialized in an Addendum to this Memorandum of Understanding.

- 3.2.5** The parties agree that the staffing levels and FTE costs shall be adjusted on an annual basis and as agreed upon by the parties. This adjusted amount shall be based upon the following: (a) actual costs to the prior year's calls for service; (b) a future work load analysis based on historic calls for service related directly or indirectly from the use of the property; (c) indirect calls stemming from the use of the Tribal property; (d) the development and expansion of a casino security force and its impact on the level of law enforcement required to be provided by the Sheriff, pursuant to this MOU and Exhibit A hereto; and (e) any proposed changes or expansion of use of the Tribal property contemplated for the upcoming year.

4.0 PROSECUTION

- 4.1** Until and unless the Tribe establishes a tribal court system, all prosecutions of individuals for violations of law at the Clark County Site for which the State of Washington or Clark County has jurisdiction shall be conducted by the Clark County Prosecuting Attorney's Office in state court without regard to whether the charges are filed against Indians (including members of the Tribe) or non-Indians. When and if the Tribe establishes a tribal court system, then Cowlitz tribal courts shall exercise jurisdiction over Indians for violations of law at the Clark County Site in accordance with federal or tribal law.
- 4.2** The Tribe shall have the right to name tribal officials with whom the Clark County Prosecuting Attorney's Office will coordinate all such prosecutions, but prosecutorial decisions and strategies shall be exclusively within the discretion of the Clark County Prosecuting Attorney's Office.
- 4.3** In addition, the Tribe will execute an agreement with the Clark County Prosecuting Attorney's Office regarding payment for prosecution of misdemeanor crimes committed on the Clark County Site to the extent that payments agreed upon are not otherwise covered by payments received by the County under this MOU or the Impact Mitigation Fund discussed at Paragraph 17.4 below.

5.0 COURT AND JAIL SERVICES

5.1 Misdemeanor/Gross Misdemeanor Prosecutions.

It is anticipated by the parties that the prosecution of persons committing crimes on the Clark County Site, court probation and services and detention will result from the arrest and or conviction of misdemeanor and gross misdemeanors. Currently the County has in place, pursuant to RCW 39.34, interlocal agreements



with cities which sets forth the cost for jail beds, court related or corrections programs and costs per case for processing cases through Clark County District Court. The parties agree to enter into an interlocal agreement substantially similar to Exhibit B, attached hereto and incorporated herein to the extent not prohibited by federal law and to the extent that payment for such expenses are not otherwise covered by payments received by the County under this MOU or the Impact Mitigation Fund discussed at Paragraph 17.4 below.

- 5.2** Juvenile Prosecutions and felony prosecutions for crimes occurring on the Clark County Site shall be processed in the same manner as juvenile and felony crimes are currently prosecuted for cities. Provided, felonies committed by Indians on tribal land may be subject to exclusive federal or tribal jurisdiction.

6.0 FIRE PROTECTION

The Tribe recognizes that protection of the present Clark County Site and future economic development of the Clark County site will result in demands for fire protection and emergency response services. The tribe agrees to compensate Clark County Fire District 12 for these costs of providing such services to tribal lands and facilities as provided for in a separate agreement between the Tribe and Fire District 12. Should the Tribe develop and operate a casino under a Class III Gaming Compact and make payments into the Impact Mitigation Fund, the financial commitments of the Tribe under this MOU shall be offset by payments received by Fire District – directly or indirectly – from the Impact Mitigation Fund discussed at Paragraph 17.4 below.

7.0 HEALTH DEPARTMENT

The Tribe agrees to comply with all health regulations adopted by the State of Washington and Clark County. The Tribe agrees to obtain all required permits and to allow health inspectors access to the property to ensure compliance with all state and local health regulations.

8.0 TRAFFIC MITIGATION

- 8.1 Roads and Traffic Circulation.** The Tribe will mitigate traffic, safety, and circulation issues in conformity with Clark County requirements. For each phase of the proposed development, Clark County will give the Tribe credit for vehicular traffic that would be generated if the Clark County Site was developed based on uses permitted in the Agriculture District. The Tribe agrees to make roadway and intersection improvements to maintain traffic levels-of-service existing prior to each phase less the credit described above. The Tribe shall ensure that in no event may it cause the public road system to operate below a level-of-service (LOS) D for intersection delay during the peak traffic hour. LOS D standards shall be determined based on the most recently adopted version of the Highway Capacity Manual (Transportation Research Board).



The public road system shall include NW 319th Street, NW 324th Street, NW 41st Avenue, NW 31st Avenue, and the I-5/319th Street interchange. The design of public roadway and intersection improvements shall be approved by Clark County prior to beginning the improvement work. The design of the NW 319th Street interchange improvements shall be approved by the Washington State Department of Transportation prior to beginning the improvement work.

- 8.2 All reasonable and negotiated costs, expenses or charges associated with the alteration, construction or improvement of the public road system set forth in 8.1 shall be the responsibility of the Tribe.
- 8.3 The parties agree to work together to insure application to any development at the Clark County Site of the so-called "late comer" provisions as provided for at RCW § 35.72.040 for the purposes of insuring that the Tribe can receive contribution or reimbursement for improvements as otherwise would be permitted under state law.

9.0 SEWER AND WATER

- 9.1 The Tribe shall provide sewage conveyance, treatment, and disposal through development of a new independent sewage treatment plant constructed by the Tribe on the Clark County Site that operates so as to meet or exceed federal and state standards which would be applicable in the absence of the Tribe's sovereignty.
- 9.2 No use of the proposed development shall be made until such time as the sewer service is completed, inspected, and fully compliant with applicable State of Washington and federal standards.
- 9.3 The Tribe shall provide for water supply through connection to the existing Clark Public Utilities system.

10.0 COMPLIANCE WITH COUNTY ORDINANCES

The trust lands subject to this Agreement and any structures and uses on the property shall be developed in a manner consistent with the attached County codes applicable at the time of development of construction. Attached are the relevant sections of Title 13 - Public Works; Title 14 - Building and Structures; Title 15 - Fire Prevention; and Title 40 - the Clark County Unified Development Code. Any future changes, additions or modifications in the use or development of the parcel shall be consistent with such County ordinances. Index of such code provisions is attached hereto as Exhibit C.

- 10.1 Any buildings constructed on the tribal trust land shall be constructed in a manner which is consistent with the provisions of applicable Clark County building codes, county ordinances and codes.



10.2 To the extent requested by the Tribe, the County shall assist the Tribe in implementing the aforesaid building standards by:

10.2.1 Promptly conducting plan checks of all documents submitted to it, on a priority basis if necessary, and

10.2.2 Assigning a building inspector to conduct inspections on a timely basis.

10.3 The Tribe shall pay to County for such services reasonable fees as shall be agreed upon.

11.0 IMPACTS ON COUNTY REVENUES

11.1 **Payments in Lieu of Taxes.** The Tribe shall compensate the County and local districts on a biannual basis in lieu of property taxes for revenue lost resulting from the removal of the Clark County Site from the tax rolls consistent with the customary assessment procedures used by the County Assessor and the State Constitution, to the extent not otherwise specifically provided for in (a) this MOU or (b) any Class III Gaming Compact entered into between the Tribe and the State pursuant to the federal Indian Gaming Regulatory Act (including payments from Impact Mitigation Fund discussed at Paragraph 17.4 below).

11.2 **Sales Tax.** It is understood that the sales tax collected within Clark County consists of a blended tax rate incorporating both the state and County sales taxes. With this understanding as predicate, the Tribe agrees to collect sales tax as appropriate on all non-Indian sales which take place on the Clark County Site in business enterprises owned and operated by the Tribe. The rate of collection shall be in conformance with the applicable State-County blended tax rate as provided by the Washington Department of Revenue and confirmed upon tribal request by the County. The Tribe agrees to remit such sales tax to the State of Washington as required by state law.

11.3 **Transient Occupancy Tax.** The Tribe will make an annual payment of the equivalent of a transient occupancy tax as would be payable by non-tribal members to the County pursuant to Clark County Code 3.16 but for the Tribe's status as a sovereign nation.

11.4 Fire District 12.

A. **Local Improvement District ("LID").** Fire District 12 has adopted a five-year plan in which the District has identified the need for an aerial fire apparatus and a main station in the vicinity of the Ridgefield Junction when significant commercial, retail, industrial, and similar development begins to occur in the District. Potential development by the tribe and current development proposed within the District require the District to



secure funding for this station and vehicle in the next two to four years. Currently, the District is exploring a LID applied to the area identified as available for this type of development. Funds from this LID would pay for construction of a new station at the Ridgefield Junction. If the District proceeds with this LID, the tribe agrees to participate in this LID in the same manner as other persons owning property in the LID and pay any amount assessed under said LID as if the tribal property were taxable, consistent with Section 6.0 above.

- B. In order to meet the above capital needs the District is also exploring a funding source where property owners would have the option of donating an initial amount up front or of donating the same amount with interest at a later date. The amounts would be set in the same manner as they would be in a LID process.
- C. **Mitigation Fees.** The District is exploring the use of various mitigation fees to address its needs for a station and aerial apparatus. If the District uses these fees, the Tribe agrees to participate a manner consistent with the participation of other developers.

12.0 ADDITIONAL TRIBAL COMMITMENTS.

12.1 Cowlitz Tribe Education & Arts Fund. The Tribe agrees to establish the Cowlitz Tribe Education & Arts Fund for the support of charitable activities in Clark County, including arts, education and local government support. The Tribe will commit two percent (2%) of the Net Revenues from Class III gaming of any casino it operates within the Clark County area, as "Net Revenues" is defined at 25 U.S.C. § 2703(9). The Fund shall be managed by a five-person Board, comprised of two (2) tribal appointees and two (2) appointees of Clark County. The fifth member of the Board shall be selected by the four Board members appointed by the parties. The Board will promulgate both standards for application and application forms to be made available to all prospective applicant groups for grants from the Fund. Grant awards shall be made biannually and such award decisions of the Board will be made at the Board's discretion. This fund shall be separate from, and in addition to, the Impact Mitigation Fund discussed at Section 17.4 below. Monies paid to the Cowlitz Tribe Education and Arts Fund shall not be used as a credit against state-tribal gaming contribution requirements. Payments to the fund shall be in lieu of payments under 5.18 of the Clark County Code.

12.2 Problem Gambling. The tribe shall make a contribution of not less than \$50,000, to a program designated by the County which deals with and treats problems associated with compulsive behavior including compulsive gambling, payments shall be annually increased or decreased coincident with the then current consumer price index for the Portland Metropolitan area, which shall expend the money exclusively to address problem gambling issues which are

identified by Clark County as requiring special efforts or attention. Such programs shall be reviewed by the parties every five (5) years. The monies paid to the problem gaming program shall be separate from, and in addition to, the Impact Mitigation Fund discussed at Section 17.4 below.

13.0 LIMITED WAIVER OF TRIBAL SOVEREIGN IMMUNITY

The parties understand that as a sovereign nation, the Tribe is immune from suit. In consideration for the Tribe's compliance with this agreement and its limited waiver of sovereign immunity the County agrees to provide services as described herein. The Tribe agrees to waive its sovereign immunity in favor of the County as to any dispute which arises out of this MOU or the activities undertaken by the Tribe pursuant to the terms set forth herein for enforcement. The Tribe's governing body shall execute a formal Resolution of Limited Waiver of Sovereign Immunity substantially identical to the Resolution attached to this MOU as Exhibit D.

14.0 DISPUTE RESOLUTION

14.1 Meet and Confer Process. In the event that either party ("Initiating Party") believes that the other has committed a possible violation of this MOU or desires to reopen negotiations of any provision hereof, it may request in writing that the parties meet and confer in good faith for the purpose of attempting to reach a mutually satisfactory resolution of the problem or issue within fifteen (15) days of the date of service of said request; provided that if the complaining party believes that the problem identified creates a threat to public health or safety, the complaining party may proceed directly to Judicial Review as provided in Section 15 below.

14.2 Notice of Disagreement. If the Initiating Party is not satisfied with the result of the meet and confer process, it may provide written notice to the other identifying and describing the unresolved issue or any alleged violation of this MOU ("Notice of Disagreement"), with particularity, if available, and setting forth the action required to remedy the disagreement.

14.3 Response to Notice of Disagreement. Within fifteen (15) business days of service of a Notice of Disagreement, the recipient shall provide a written response either denying or admitting the allegation(s) set forth in the Notice of Disagreement, and, if the truth of the allegations are admitted, setting forth in detail the steps it has taken and/or will take to cure the violations. Failure to serve a timely response shall entitle the complaining party to proceed directly to Judicial Review as provided in Section 15 below.

14.4 Expedited Procedure for Threats to Public Safety. If the County or the Tribe reasonably believes that in violation of this MOU the other's conduct has caused or will cause a significant threat to public health or safety, resolution of which cannot be delayed for the time periods otherwise specified in this section, the



complaining party may proceed directly to Judicial Review pursuant to Section 15 of this MOU. At least twenty-four (24) hours before proceeding in this manner, the complaining party shall provide to the other a written request for correction and notice of intent to exercise its rights under this Paragraph 14.4, setting out the legal and/or factual basis for its reasonable belief that there is a present or an imminent threat to public health or safety.

15.0 JUDICIAL REVIEW

- 15.1** The parties consent to judicial review of any dispute which cannot be resolved through the Dispute Resolution provisions of Section 14. Enforcement of this agreement shall be enforced in Clark County Superior Court.
- 15.2** Service of process in any such judicial proceeding is waived in favor of delivery of court documents by Certified Mail - Return Receipt Requested to the following:

FOR THE TRIBE:

Tribal Chairman
Cowlitz Indian Tribe
1055 - 9th Avenue - Suite A
Longview, Washington 98632
Telephone: (360) 577-8140
Facsimile: (360) 577-7432
Dennis J. Whittlesey, Esquire
Jackson Kelly PLLC
2401 Pennsylvania Avenue, N.W.
Suite 400
Washington, D. C. 20037
Telephone: (202) 973-0200
Facsimile: (202) 973-0272

FOR THE COUNTY:

Chairman of the County Commissioners
or the County Administrator
1300 Franklin Street
Vancouver, Washington 98660
Telephone: (360) 397-2232
Facsimile: (360) 397-6058

16.0 EFFECTIVE DATE OF THIS MEMORANDUM OF UNDERSTANDING

This MOU is being executed as of the date shown hereon, but it is specifically agreed that this MOU shall not become effective and enforceable until the date on which the United States Secretary of the Interior accepts the Clark County Site in trust for the Cowlitz Indian Tribe. The acceptance of the Clark County Site into trust for the Tribe is an express condition precedent to this MOU's becoming final.

17.0 MISCELLANEOUS

- 17.1 Amendment or Modification.** This MOU may be modified or amended only by a written instrument executed by the Tribe and the County, pursuant to the same authorizations used to execute this MOU in its original form.



- 17.2 Entire Agreement.** This MOU is the entire agreement between the parties and supersedes all prior written and oral agreements, if any, with respect to the subject matter hereof.
- 17.3 Severability.** Except as otherwise provided in this Paragraph 17.3, the invalidity of any provisions or portion of a provision of this MOU as determined by a court of competent jurisdiction shall not affect the validity of any other provisions of this MOU or the remaining portions of the applicable provisions. If any provision of this MOU is declared invalid by a court of competent jurisdiction which results in the diminution of any payments or financial obligations of the Tribe to the County, then the parties shall use their best efforts to renegotiate the terms of the invalid provisions; in the event that the parties are unable to successfully renegotiate the invalid terms, then they shall resolve the matters at issue through the dispute resolution provisions of this MOU.
- 17.4 Tribal Financial Obligations Adjusted by Payments to County Under any Class III Gaming Compact Between the Tribe and the State.** The parties recognize that the State of Washington currently requires tribes to accept in their Class III Gaming Compacts a provision for contribution to an "Impact Mitigation Fund." This provision mandates the payment of a designated percentage of the Net Win of any tribal gaming enterprise into the Impact Mitigation Fund for the specific purpose of mitigating the financial impact from gaming operations on local law enforcement agencies, emergency services, and other services (including traffic and transportation) which otherwise would impose an increased burden on them. Should the Tribe develop and operate a casino under a Class III Gaming Compact at the Clark County Site and make payments into the Impact Mitigation Fund, then direct payments made by the Tribe pursuant to this agreement, which would have qualified for reimbursement from the Impact Mitigation Fund, shall be credited against Impact Mitigation Fund payments. It is the intent of the parties that where the Tribe has directly paid for services or impacts, the Tribe should not be required to pay the same amount from the Impact Mitigation Fund. This paragraph does not apply to payments made by the Tribe pursuant to Sections 12.1 and 12.2.
- 17.5 State Jurisdiction Over Tribe.** In this MOU, the Tribe agrees that it will act in a manner consistent with certain applicable state laws and Clark County ordinances and requirements/regulations. Nothing in this agreement shall be construed as constituting tribal consent to state and local jurisdiction beyond the specific provisions hereof.
- 17.6 Force Majeure.** In the event of a forced delay in the performance by either party of obligations under this MOU due to acts of God or of the public enemy, strikes, lockouts, unusual delay in transportation, unavailability of materials, fires, floods, catastrophic weather or other natural disasters, epidemics, riots, insurrection, war or unavoidable casualties, the time for performance of such obligations shall be extended for the period of the forced delay.



17.7 **Obligations to Continue During Life of Project.** Unless specifically designated otherwise, all of the parties' obligations under this MOU shall continue throughout the entire life of the development on the Clark County Site to which this MOU pertains.

17.8 **Governing Law.** This MOU shall be construed pursuant to the applicable federal laws and the laws of the State of Washington.

17.9 **Mutual Good Faith.** Throughout the term of this MOU, the parties agree to exercise good faith and to observe the covenants contained herein.

18.0 REVIEW BY THE DEPARTMENT OF THE INTERIOR.

The parties shall submit this Agreement to the United States Department of the Interior for either (a) approval pursuant to 25 U.S.C. § 81, or (b) a written response that this Agreement does not require approval under 25 U.S.C. § 81. The County's signature to this MOU is expressly contingent upon the approval called for in this paragraph, and the County has the right to withdraw its support for the MOU if it is not submitted to the Department of the Interior pursuant to this Section or is rejected by the Department of Interior as unacceptable and unenforceable.

DATED this 2 day of March, 2004.

ATTEST:

**BOARD OF COMMISSIONERS FOR
CLARK COUNTY, WASHINGTON**

Laura Richards
Clerk to the Board

By: Betty Sue Morris
Betty Sue Morris, Chair

Approved as to form only:

ARTHUR D. CURTIS

Prosecuting Attorney

Curt Wyrick
Curt Wyrick, WSBA #6918
Chief Deputy

By: Jodie Stanton
Jodie Stanton, Commissioner

By: Craig Pridemore
Craig Pridemore, Commissioner

COWLITZ INDIAN TRIBE

John Barnett
John Barnett, Tribal Chairman

ATTEST: Nancy Barnes
Tribal Secretary